HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 18536 of 2007

Dated 10th October, 2007

Between
V.Sundara Rami Reddy

…Petitioner

and

Special Deputy Registrar/OSD,
The AP Cooperative Bank Limited, Troop Bazar, Hyderabad,
And ors

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 18536 of 2007

ORDER:

In this Writ Petition, the petitioner has questioned the validity of the order dated 23-6-2007 passed in I.A.No. 40 of 2007 in ARC. No.13/99/R1 by the first respondent-Special Cadre Deputy Registrar/Officer on Special Duty, Andhra Pradesh State Cooperative Bank Limited, Hyderabad.

M/s. Sri Kumara Swamy Acqua Products (P) Limited, being a company registered under the Companies Act, 1956, had availed credit facilities from the second respondent-AP State Cooperative Bank Limited and on default made in repayment of the loan, the second respondent-Bank had filed a claim petition before the first

respondent-Special Cadre Deputy Registrar for issuance of Certificate for recovery of an amount of Rs.4,85,12,097.26 Ps with pendenti lite and future interest and costs, under Section 71 of the Andhra Pradesh Cooperative Societies Act, 1964. The said application was filed, against M/s Sri Kumaraswamy Acqua Products (P) Limited and its directors, who had executed the deed of guarantee. The petitioner herein is the second respondent in the said application. On coming to know that the amounts of Rs.61,10,34/- towards compensation for 956 cashew nut trees existing in the surplus lands surrendered and Rs.38,82,281/- towards compensation to the petitioner, are being paid to M/s.Kumara Swamy Aqua Products (P) Ltd and the petitioner, respectively, the second respondent has filed an interlocutory application in I.A.No. 40 of 2001 in ARC.No. 13/99/R1 before the first respondent to attach the said amounts. On the said application, impugned order is passed by the first respondent-Special Cadre Deputy Registrar attaching the amount of Rs.99,92,415/- and prohibiting to withdraw the said amounts, pending adjudication of the claim application filed under Section 71 of the AP Cooperative Societies Act, 1964.

Out of the above said total sum of Rs.99,92,415/-, M/s. Sri Kumara Swamy Marine Exports Pvt. Limited, yet another company, had filed Writ Petition No.15729 of 2007 claiming an amount of Rs.38,82,281/- payable to the petitioner herein. It was its case that the said compensation is payable to the said Company and it has nothing to do with the credit facilities availed by the M/s. Kumara Swamy Acqua Products (P) Limited. In the above said Writ Petition, this Court by final order dated 3-8-2007, modified the order passed in I.A.No.40 of 2007 restricting the attachment to a sum of Rs.61,10,134/-. The

petitioner herein, who claims right over the said compensation, has filed this Writ Petition questioning the order dated 23-6-2007.

In this Writ Petition, it is the case of the petitioner that the impugned order is passed in violation of the principles of natural justice and also contrary to the provisions under Section 73 of the A.P. Cooperative Societies Act, 1964. It is the case of the petitioner that there are no valid reasons recorded by the first respondent in the impugned order for attachment of the aforesaid amount and prohibiting the petitioner from withdrawing the same.

Counter affidavit is filed by the General Manager, A.P. State Cooperative Bank Limited, stating that though the company, M/s.Kumaraswamy Acqua Products (P) Limited, had availed certain credit facilities from their bank, but however, it defaulted in repayment of the amount due, and, as such, claim petition was filed against the said company and four other guarantors for recovery of sum of Rs.4,85,12,095.26Ps, which was due as on 31-3-1998. When show cause notice was issued under Section 71 of the A.P. Cooperative Societies Act, 1964, one of the Directors had filed Writ Petition No. 24127 of 1999 and the same ended in dismissal by order dated 22-6-2007, granting two weeks' time to the company to submit their explanation. It is stated that at this stage, coming to know that certain compensation amounts from the Government of Andhra Pradesh are being paid to the petitioner and the company, second respondent-Bank moved an application in I.A.No. 40 of 2007 in ARC.No. 13/99-R1 under Section 73 read with Section 62(4) of the A.P. Cooperative Societies Act, 1964 seeking attachment of the said amount. It is stated in the counter affidavit that as much as the said order is an interim order, the petitioner can question the same before the very same

authority by filing counters. It is further stated that as much as there is also alternative remedy of appeal contemplated under Section 76 of the A.P. Cooperative Societies Act, 1964 before the A.P. Cooperative Tribunal, this Writ Petition filed under Article 226 of the Constitution of India is not maintainable.

Heard Sri P.Krishna Reddy learned Counsel appearing for the petitioner and Sri A.H.Ramakrishna Rao, learned Standing Counsel appearing for the second respondent-Bank.

Before considering the rival contentions, it is appropriate to refer to the provision of Section 73 of the A.P. Cooperative Societies Act, 1964. The said provision deals with the attachment of property before decision or order. It reads as follows:

> "73. Attachment of property before decision or order:-If the Registrar is satisfied on application, report, inquiry, or otherwise that any person with intent to delay or obstruct the enforcement of any decision or order that may be made against him under the provisions of the Act:-
>
> (a) is about to dispose of the whole or any part of his property; or
>
> (b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, the arbitrator or liquidator, as the case may be,
>
> he may, unless adequate security is furnished direct the attachment of the said property and such attachment shall have the same effect as if made by a competent Civil Court."

From a reading of the above, it is clear that before passing an order for attachment, the Registrar shall satisfy either on the application or report or inquiry, that the person, against whom claim is made, is about to dispose of whole or any part of his property, or, is about to remove

whole or any part of his property from the jurisdiction of the Registrar, arbitrator or liquidator as the case may be. Further, the said provision also obligates the authority to give an opportunity to furnish security before passing an order for attachment. But, from a perusal of the impugned order, there is no indication of recording any finding as to satisfaction of the Registrar. Though it is submitted by the learned Counsel for the respondent that the impugned order is an interim order and the petitioner as well can move the very same forum, but however, a reading of the order makes it clear that the said order is a final order passed in the interlocutory application in I.A.No. 40 of 2007, pending adjudication of the claim petition filed under Section 71 of the A.P. Cooperative Societies Act, 1964. It is the case of the respondents that there is an alternative remedy of appeal under Section 71(1) of the A.P. Cooperative Societies Act, 1964 against the impugned order before the A.P. Cooperative Tribunal and reliance is placed by the learned Counsel on the judgment of the learned Single Judge of this Court in the case of *Munukuru Nagaratnamma and ors. Vs. Special Cadre Deputy Registrar, Officer on Special Duty, Nellore District Coop.Central Bank Limited, Nellore* {2002 (4) ALD 697}. But however, it is to be seen that Rule of exclusion of writ jurisdiction on the ground of availability of alternative remedy is discretionary and not one of compulsion. It is well settled that in spite of availability of the alternative remedy, this Court can exercise jurisdiction in a case where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction. In this context, the decision relied on by the learned Counsel for the petitioner in the case of *Harbanslal Sahnia Vs. Indian Oil Corporation* {[2003) 2 SCC 107} supports the case of the petitioner. This is a case where the impugned

order is passed in fragrant violation of the statutory provision under Section 73 of the A.P. Cooperative Societies Act, 1964. Undisputedly, in this case, no notice was given to the petitioner to furnish security before passing the impugned order attaching the amount and prohibiting the petitioner from withdrawing the compensation amount. Though, it is the case of the respondent that said order was passed in the application filed under Section 73 of the A.P. Cooperative Societies Act, 1964, but the same is also in exercise of powers under Section 62(4) of the A.P.Cooperative Societies Act, 1964. Even the said provision also will not empower the first respondent to pass such order without giving opportunity to the petitioner. As much as no notice was given before passing impugned order, and, no finding was recorded by the first respondent in respect of the order prohibiting the petitioner for withdrawal of the compensation due to him, I deem it appropriate to entertain the writ petition in spite of availability of alternative remedy, set aside the impugned order and allow the Writ Petition and remit the matter back for fresh consideration by the first respondent-Special Cadre Deputy Registrar. Accordingly, the order under challenge, dated 23-6-2007 passed in I.A.No. 40 of 2007 in ARC. No.13/99/R1 is set aside, and the matter is remitted back to the first respondent--Special Cadre Deputy Registrar/Officer on Special Duty, Andhra Pradesh State Cooperative Bank Limited, to consider the application afresh by giving notice to the petitioner and considering the explanation, if any, and pass appropriate orders.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 10th October, 2007.
Msnr.